

United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act",

City and Borough of Juneau
Alaska-Juneau (A-J) Mine

is authorized to discharge from the Alaska-Juneau Mine near Juneau, Alaska, at the following locations:

<u>Outfall</u>	<u>Receiving Water</u>	<u>Latitude</u>	<u>Longitude</u>
001	Gold Creek	58° 18' 26" N	134° 22' 41" W
005	Gold Creek via Snowslide Gulch	58° 18' 25" N	134° 21' 50" W

in accordance with discharge point(s), effluent limitations, monitoring requirements and other conditions set forth herein.

This permit shall become effective _____.

This permit and the authorization to discharge shall expire at midnight _____.

The permittee shall reapply for a permit reissuance on or before _____, 180 days before the expiration of this permit if the permittee intends to continue operations and discharges at the facility beyond the term of this permit.

Signed this ____ day of _____.

DRAFT

Michael F. Gearheard
Director
Office of Water and Watersheds, Region 10
U.S. Environmental Protection Agency

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The following is a summary of some of the items the permittee must complete and/or submit to EPA during the term of this permit:

Item	Due Date
1. Discharge Monitoring Reports (DMR)	DMRs are due annually and must be postmarked on or before May 31.
2. Quality Assurance Plan (QAP)	The permittee must provide EPA and ADEC with written notification that the Plan has been developed and implemented within 180 days after the effective date of the final permit (see I.C.). The Plan must be kept on site and made available to EPA and ADEC upon request.
3. Best Management Practices (BMP) Plan	The permittee must provide EPA and ADEC with written notification that the Plan has been developed and implemented within 180 days after the effective date of the final permit (see II.C.). The Plan must be kept on site and made available to EPA and ADEC upon request.
4. NPDES Application Renewal	The application must be submitted 180 days before the expiration date of the permit (see V.B.).
5. Surface Water Monitoring Report	The Report must be submitted with the annual DMR and must be postmarked on or before May 31.

TABLE OF CONTENTS

I.	LIMITATIONS AND MONITORING REQUIREMENTS	5
A.	Effluent Limitations and Monitoring	5
B.	Surface Water Monitoring	6
C.	Quality Assurance Plan (QAP)	8
II.	BEST MANAGEMENT PRACTICES PLAN	9
A.	Purpose	9
B.	Development and Implementation Schedule	9
C.	Documentation	9
D.	Objectives	9
E.	Elements of the BMP Plan	10
F.	BMP Plan Modification	14
III.	MONITORING, RECORDING AND REPORTING REQUIREMENTS	14
A.	Representative Sampling (Routine and Non-Routine Discharges)	14
B.	Reporting of Monitoring Results	15
C.	Monitoring Procedures	15
D.	Additional Monitoring by Permittee	15
E.	Records Contents	15
F.	Retention of Records	15
G.	Twenty-four Hour Notice of Noncompliance Reporting	16
H.	Other Noncompliance Reporting	17
I.	Changes in Discharge of Toxic Substances	17
IV.	COMPLIANCE RESPONSIBILITIES	18
A.	Duty to Comply	18
B.	Penalties for Violations of Permit Conditions	18
C.	Need to Halt or Reduce Activity not a Defense	20
D.	Duty to Mitigate	20
E.	Proper Operation and Maintenance	20
F.	Bypass of Treatment Facilities	20
G.	Upset Conditions	21
H.	Toxic Pollutants	22
I.	Planned Changes	22
J.	Anticipated Noncompliance	22
V.	GENERAL PROVISIONS	22
A.	Permit Actions	22
B.	Duty to Reapply	23
C.	Duty to Provide Information	23
D.	Other Information	23
E.	Signatory Requirements	23
F.	Availability of Reports	24

G. Inspection and Entry 25

H. Property Rights 25

I. Transfers 25

J. State Laws 25

VI. DEFINITIONS 25

LIST OF TABLES

Table 1: Effluent Limits and Monitoring Requirements 6

Table 2: Monitoring Requirements for Stations GCR and GCB 7

I. LIMITATIONS AND MONITORING REQUIREMENTS

During the effective period of this permit, the permittee is authorized to discharge pollutants from outfalls 001 and 005, within the limits and subject to the conditions set forth herein. This permit authorizes the discharge of only those pollutants resulting from facility processes, waste streams, and operations that have been clearly identified in the permit application dated February 20, 2003. This permit does not authorize the discharge of any wastestreams, including spills and other unintentional or non-routine discharges of pollutants, that are not part of the normal operation of the facility as disclosed in the permit application. If the permittee wishes to perform other operations or processes or discharge from other outfalls, the permittee must request and obtain a modification of this NPDES permit, pursuant to 40 CFR 122.62.

A. Effluent Limitations and Monitoring

1. The permittee must limit and monitor discharges from outfall 001 as specified in Table 1, below. All figures represent maximum effluent limits unless otherwise indicated. The permittee must comply with the effluent limits in the table at all times unless otherwise indicated, regardless of the frequency of monitoring or reporting required by other provisions of this permit.
2. The permittee must not discharge any floating solids, visible foam in other than trace amounts, or oily wastes that produce a sheen on the surface of the receiving water.
4. The permittee must sample the effluent at the GCDT adit, prior to flow into Gold Creek.
5. Method Detection Limits. For all effluent monitoring, the permittee must use methods that can achieve a method detection limit (MDL) less than the effluent limitation. For parameters that do not have effluent limitations, the permittee must use methods that can achieve MDLs less than or equal to those specified in Table 2.
6. For purposes of reporting on the DMR, if a value is greater than the MDL, the permittee must report the actual value. If a value is less than the MDL, the permittee must report "less than {numeric MDL}" on the DMR. For purposes of calculating monthly averages, zero may be used for values less than the MDL.
7. The permittee must collect the annual effluent samples during the low flow season, between January 1 and April 30 of each year.

Table 1: Effluent Limits and Monitoring Requirements Outfall 001 (Gold Creek Drainage Tunnel)					
Parameter	Units	Limits on Daily Discharge		Monitoring Requirements	
		Average Monthly	Maximum Daily	Frequency	Sample Type
Alkalinity	mg/L	—	—	Annual	Grab
Aluminum	µg/L	—	—	Annual	Grab
Cadmium	µg/L	0.55	1.1	Annual	Grab
Copper	µg/L	14.7	29.5	Annual	Grab
Flow	mgd	—	—	Annual	Measure
Hardness	mg/L as CaCO ₃	—	—	Annual	Grab
Lead	µg/L	4.21	8.45	Annual	Grab
Mercury	µg/L	0.034	0.069	Annual	Grab
Nickel	µg/L	—	—	Annual	Grab
Oil and Grease	visual	No Visible Sheen		Annual	Grab
pH	standard units	6.5 - 8.5		Annual	Grab
Selenium	µg/L	14.4	28.8	Annual	Grab
Sulfate	mg/L	—	—	Annual	Grab
TDS	mg/L	775	1556	Annual	Grab
TSS	mg/L	20	30	Annual	Grab
Turbidity	NTU	—	—	Annual	Grab
Zinc	µg/L	134	269	Annual	Grab
Note: Metals measured in Total Recoverable.					

B. Surface Water Monitoring. The permittee must perform the following receiving water monitoring program to monitor changes that may occur as a result of the discharges from the facility.

1. The permittee must conduct annual surface water monitoring at stations GCR and GCB as specified in Table 2, below. The permittee must sample the receiving water during the low flow season, between January 1 and April 30 of each year. The permittee must sample the receiving water on the same day as effluent sampling, when practicable.

Table 2: Monitoring Requirements for Stations GCR and GCB				
Parameter	Units	Sample Frequency	Sample Type	Maximum MDL
Alkalinity¹	mg/L	Annual	Grab	10
Aluminum	µg/L	Annual	Grab	20
Cadmium	µg/L	Annual	Grab	0.1
Copper	µg/L	Annual	Grab	3
Flow²	µg/L	Annual	Measure	—
Hardness¹	mg/L	Annual	Grab	10
Lead	µg/L	Annual	Grab	1
Mercury	µg/L	Annual	Grab	0.005
Nickel	µg/L	Annual	Grab	5
Oil and Grease	visible sheen	Annual	Grab	—
pH	s.u.	Annual	Grab	—
Selenium	µg/L	Annual	Grab	2
Sulfate	mg/L	Annual	Grab	—
Total Dissolved Solids (TDS)	mg/L	Annual	Grab	—
Turbidity	NTU	Annual	Grab	—
Zinc	µg/L	Annual	Grab	20
1. The permittee must monitor for alkalinity and hardness at station GCR. 2. The permittee must monitor for stream flow at monitoring location GCR, GCB, or GCF. Streamflow measurements must be made during the low flow season, between January 1 and April 30 of each year. When practicable, streamflow monitoring shall occur on the same day as effluent and receiving water sampling.				

2. The permittee must analyze all samples for the parameters listed in Table 2 to achieve method detection limits (MDLs) that are equivalent to or less than those listed in Table 2.
3. Surface water monitoring results must be submitted to EPA and ADEC with the annual DMR. At a minimum, the report must include the following:
 - a. Dates of sample collection and analyses.
 - b. Results of sample analyses.

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- c. Relevant quality assurance/quality control (QA/QC) information.

C. Quality Assurance Plan (QAP). The permittee must update their existing Quality Assurance Plan (QAP) for all monitoring required by this permit. The permittee must provide EPA and ADEC with written notification that the Plan has been developed and implemented within 180 days of the effective date of this permit. Any existing QAPs may be modified for the requirements under this section.

1. The QAP must be designed to assist in planning for the collection and analysis of effluent and receiving water samples in support of the permit and in explaining data anomalies when they occur.
2. Throughout all sample collection and analysis activities, the permittee must use the EPA-approved QA/QC and chain-of-custody procedures described in *Requirements for Quality Assurance Project Plans* (EPA/QA/R-5) and *Guidance for Quality Assurance Project Plans* (EPA/QA/G-5). The QAP must be prepared in the format which is specified in these documents.
3. At a minimum, the QAP must include the following:
 - a. Details on the number of samples, type of sample containers, preservation of samples, holding times, analytical methods, analytical detection and quantitation limits for each target compound, type and number of quality assurance field samples, precision and accuracy requirements, sample preparation requirements, sample shipping methods, and laboratory data delivery requirements.
 - b. Map(s) indicating the location of each sampling point.
 - c. Qualification and training of personnel.
 - d. Name(s), address(es) and telephone number(s) of the laboratories, used by or proposed to be used by the permittee.
4. The permittee must amend the QAP whenever there is a modification in sample collection, sample analysis, or other procedure addressed by the QAP.
5. Copies of the QAP must be kept on site and made available to EPA and/or ADEC upon request.

II. BEST MANAGEMENT PRACTICES PLAN

- A. Purpose.** Through implementation of the best management practices (BMP) plan the permittee must prevent or minimize the generation and the potential for the release of pollutants from the facility to the waters of the United States through normal and ancillary activities.
- B. Development and Implementation Schedule.** The permittee must develop and implement a BMP Plan which achieves the objectives and the specific requirements listed below. Any existing BMP plans may be modified for the requirements of this section.
- C. Documentation.** The permittee must maintain a copy of the BMP Plan at the facility and make it available to EPA or an authorized representative upon request. The permittee must provide EPA and ADEC with written notification that the Plan has been developed and implemented within 180 days of the effective date of this permit.
- D. Objectives.** The permittee must develop and amend the BMP Plan consistent with the following objectives for the control of pollutants.
1. The number and quantity of pollutants and the toxicity of effluent generated, discharged or potentially discharged at the facility must be minimized by the permittee to the extent feasible by managing each waste stream in the most appropriate manner.
 2. Under the BMP Plan and any Standard Operating Procedures included in the BMP Plan, the permittee must ensure proper operation and maintenance of water management and wastewater treatment systems. BMP Plan elements must be developed in accordance with good engineering practices.
 3. Each facility component or system must be examined for its waste minimization opportunities and its potential for causing a release of significant amounts of pollutants to waters of the United States due to equipment failure, improper operation, natural phenomena such as rain or snowfall, etc. The examination must include all normal operations and ancillary activities including material storage areas, storm water, in-plant transfer, material handling and process handling areas, loading or unloading operations, spillage or leaks, sludge and waste disposal, or drainage from raw material storage.
- E. Elements of the BMP Plan.** The BMP Plan must be consistent with the objectives above and the general guidance contained in *Guidance Manual for*

Developing Best Management Practices (EPA 833-B-93-004, October 1993) and *Storm Water Management For Industrial Activities, Developing Pollution Prevention Plans and Best Management Practices* (EPA 832-R-92-006) or any subsequent revision to these guidance documents. The BMP Plan must include, at a minimum, the following items:

1. Plan Components.
 - a. Statement of BMP policy. The BMP Plan must include a statement of management commitment to provide the necessary financial, staff, equipment, and training resources to develop and implement the BMP Plan on a continuing basis.
 - b. Structure, functions, and procedures of the BMP Committee. The BMP Plan must establish a BMP Committee responsible for developing, implementing, and maintaining the BMP Plan.
 - c. Risk identification and assessment.
 - d. Standard operating procedures to achieve the above objectives and specific best management practices (see below) and
 - e. Reporting of BMP incidents. The reports must include a description of the circumstances leading to the incident, corrective actions taken and recommended changes to operating and maintenance practices to prevent recurrence.
 - f. Materials compatibility.
 - g. Good housekeeping.
 - h. Inspections.
 - i. Preventative maintenance and repair.
 - j. Security
 - k. Employee training.
 - l. Recordkeeping and reporting.
 - m. Prior evaluation of any planned modifications to the facility to ensure that the requirements of the BMP plan are considered as part of the modifications.

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n. Final constructed site plans, drawings and maps (including detailed storm water outfall/culvert configurations).

2. Specific Best Management Practices. The BMP Plan must establish specific BMPs or other measures to achieve the objectives under part II.D. and which ensure that the following specific requirements are met:

a. Description of potential pollutant sources. The Plan shall identify all activities and significant materials which may potentially be significant storm water pollutant sources (including sediment) or may result in the discharge of pollutants during dry weather from the facility site. The Plan shall include, at a minimum:

i. A site topographic map shall be included in the Plan. At a minimum, the map shall identify and label the following areas:

- Site boundaries and access and haul roads;
- The location of each storm water outfall and an outline of the portions of the drainage area that are within the facility boundaries;
- Location of drainage water (where water leaves mine);
- Points of discharge from the property for drainage water;
- Springs, streams, wetlands and other surface waters

ii. For each area of the mine site that generates storm water discharges associated with industrial activity or which may result in the discharge of pollutants during dry weather, the permittee shall provide a prediction of the direction of flow, and an identification of the types of pollutants (e.g., heavy metals) which are likely to be present in discharges. Factors to consider include the mineralogy of the ore and waste rock (e.g., acid forming), toxicity and quantity of chemical(s) used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

b. Sediment and Erosion Control. The Plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant erosion of soil and/or other materials, and identify measures to be used to limit erosion and/or remove

sediment from storm water runoff. The measures to consider include diversion of flow away from areas susceptible to erosion, stabilization methods to prevent or minimize erosion, and structural methods for controlling sediment. These can include the following:

Diversion practices include the following: interceptor dikes and swales; diversion dikes, curbs and berms; pipe slope drains; subsurface drains; and drainage/storm water conveyance systems (channels or gutters; open top box culverts, and waterbars; rolling dips and road sloping; roadway surface water deflector; and culverts).

Stabilization practices include the following: temporary or permanent seeding; vegetative buffer strips; protection of trees; topsoiling; soil conditioning; contouring; mulching; geotextiles (matting; netting; or blankets); riprap; gabions; and retaining walls.

Structural practices include the use of the following: check dams; rock outlet protection; level spreaders; gradient terraces; straw bale barriers; silt fences; gravel or stone filter berms; brush barriers; sediment traps; grass swales; pipe slope drains; earth dikes; and other controls such as entrance stabilization, waterway crossings or wind breaks.

- c. Management of Runoff. The Plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The Plan shall provide for implementation and maintenance of the storm water practices that the permittee determines to be reasonable and appropriate. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity [see paragraph II.E.2.a of this section (Description of Potential Pollutant Sources)] shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices, or impoundments.

- d. Ensure that berms, including any pond walls, ditches, dikes, dams and similar water retention structures shall be constructed in a manner such that they reject the passage of unwanted water.
 - e. Ensure that measures are taken such that pollutant materials removed from the wastewater streams will be retained and not discharged to waters of the United States.
 - f. Ensure that all water control devices, including but not limited to structures and berms, and all solids retention structures such as berms, dikes, and pond structures and dams, shall be maintained to continue their effectiveness and to protect from unexpected and catastrophic failure.
 - g. Level "00" Adit Site Activities. Limit personnel activity in this adit to that necessary to perform authorized activities and to meet other operational requirements of the mine. Because external access is not possible and internal access is very difficult, very little activity will occur on this level. There are no mine workings above this level which also limits the possibility of human activity having an influence on water discharged from this portal. Conduct Site Activities in wet areas using special techniques to limit sediment discharge from the portal. These include passive means such as settling, silt fences and straw bales to reduce sediment discharge from the portal. Active methods such as floc logs may also be incorporated in a treatment program.
3. Review and Certification. The BMP Plan must be reviewed and certified as follows:
- a. Review by the City and Borough of Juneau Lands and Resources Manager.
 - h. Certified statement that the above reviews have been completed and that the BMP Plan fulfills the requirements set forth in this permit. The statement must be certified by the dated signatures of the City and Borough of Juneau Lands and Resources Manager. The statement must be submitted to EPA within 60 days of the effective date of this permit.

F. BMP Plan Modification.

- 1. The permittee must amend the BMP Plan whenever there is a change in the facility or in the operation of the facility which materially increases the

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generation of pollutants or their release or potential release to surface waters.

2. The permittee must amend the BMP Plan whenever it is found to be ineffective in achieving the general objective of preventing and minimizing the generation and the potential for the release of pollutants from the facility to the waters of the United States and/or the specific requirements above.
3. Any changes to the BMP Plan must be consistent with the objectives and specific requirements listed above.

III. MONITORING, RECORDING AND REPORTING REQUIREMENTS

- A. Representative Sampling (Routine and Non-Routine Discharges).** Samples and measurements must be representative of the volume and nature of the monitored discharge.

In order to ensure that the effluent limits set forth in this permit are not violated at times other than when routine samples are taken, the permittee must collect additional samples at the appropriate outfall whenever any discharge occurs that may reasonably be expected to cause or contribute to a violation that is unlikely to be detected by a routine sample. The permittee must analyze the additional samples for those parameters limited in Part I.A. of this permit that are likely to be affected by the discharge.

The permittee must collect such additional samples as soon as the spill, discharge, or bypassed effluent reaches the outfall. The samples must be analyzed in accordance with paragraph III.C (“Monitoring Procedures”). The permittee must report all additional monitoring in accordance with paragraph III.D (“Additional Monitoring by Permittee”).

- B. Reporting of Monitoring Results.** The permittee must summarize monitoring results annually on the Discharge Monitoring Report (DMR) form (EPA No. 3320-1) or equivalent. The annual DMR must be postmarked by May 31st. The permittee must sign and certify all DMRs, and all other reports, in accordance with the requirements of Part V.E. of this permit (“Signatory Requirements”). The permittee must submit the legible originals of these documents to the Director, Office of Water, with copies to ADEC at the following addresses:

United States EPA Region 10
Attn: PCS Data Entry Team
1200 Sixth Avenue, OW-133

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Seattle, Washington 98101

Alaska Department of Environmental Conservation
410 Willoughby Avenue, Suite 303
Juneau, Alaska 99801

- C. Monitoring Procedures.** Monitoring must be conducted according to test procedures approved under 40 CFR 136, unless other test procedures have been specified in this permit or approved by EPA as an alternate test procedure under 40 CFR 136.5.
- D. Additional Monitoring by Permittee.** If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the permittee must include the results of this monitoring in the calculation and reporting of the data submitted in the DMR.
- Upon request by the Director, the permittee must submit results of any other sampling, regardless of the test method used.
- E. Records Contents.** Records of monitoring information must include:
1. the date, exact place, and time of sampling or measurements;
 2. the name(s) of the individual(s) who performed the sampling or measurements;
 3. the date(s) analyses were performed;
 4. the names of the individual(s) who performed the analyses;
 5. the analytical techniques or methods used; and
 6. the results of such analyses.
- F. Retention of Records.** The permittee must retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, copies of DMRs, a copy of the NPDES permit, and records of all data used to complete the application for this permit, for a period of at least five years from the date of the sample, measurement, report or application. This period may be extended by request of the Director or ADEC any time.
- G. Twenty-four Hour Notice of Noncompliance Reporting**
1. The permittee must report the following occurrences of noncompliance by telephone within 24 hours from the time the permittee becomes aware of the circumstances:

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- a. any noncompliance that may endanger health or the environment;
 - b. any unanticipated bypass that exceeds any effluent limitation in the permit (See Part IV.F., "Bypass of Treatment Facilities");
 - c. any upset that exceeds any effluent limitation in the permit (See Part IV.G., "Upset Conditions"); or
 - d. any violation of a maximum daily discharge limitation for any of the pollutants in Table 1 of Part I.A.
2. The permittee must also provide a written submission within five days of the time that the permittee becomes aware of any event required to be reported under subpart 1 above. The written submission must contain:
 - a. a description of the noncompliance and its cause;
 - b. the period of noncompliance, including exact dates and times;
 - c. the estimated time noncompliance is expected to continue if it has not been corrected; and
 - d. steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
 3. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the NPDES Compliance Hotline in Seattle, Washington, by telephone, (206) 553-1846.
 4. Reports must be submitted to the addresses in Part III.B ("Reporting of Monitoring Results").

H. Other Noncompliance Reporting. The permittee must report all instances of noncompliance, not required to be reported within 24 hours, at the time that monitoring reports for Part III.B ("Reporting of Monitoring Results") are submitted. The reports must contain the information listed in Part III.G.2 of this permit ("Twenty-four Hour Notice of Noncompliance Reporting").

I. Changes in Discharge of Toxic Substances. The permittee must notify the Director and ADEC as soon as it knows, or has reason to believe:

1. That any activity has occurred or will occur that would result in the discharge, on a routine or frequent basis, of any toxic pollutant that is not

limited in the permit, if that discharge may reasonably be expected to exceed the highest of the following "notification levels":

- a. One hundred micrograms per liter (100 µg/l);
 - b. Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
 - c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or
 - d. The level established by the Director in accordance with 40 CFR 122.44(f).
2. That any activity has occurred or will occur that would result in any discharge, on a non-routine or infrequent basis, of any toxic pollutant that is not limited in the permit, if that discharge may reasonably be expected to exceed the highest of the following "notification levels":
- a. Five hundred micrograms per liter (500 µg/l);
 - b. One milligram per liter (1 mg/l) for antimony;
 - c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or
 - d. The level established by the Director in accordance with 40 CFR 122.44(f).

IV. COMPLIANCE RESPONSIBILITIES

A. Duty to Comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or for denial of a permit renewal application.

B. Penalties for Violations of Permit Conditions

1. Civil and Administrative Penalties. Pursuant to 40 CFR Part 19 and the Act, any person who violates section 301, 302, 306, 307, 308, 318 or 405

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of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed the maximum amounts authorized by Section 309(d) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently \$32,500 per day for each violation).

2. **Administrative Penalties.** Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Pursuant to 40 CFR 19 and the Act, administrative penalties for Class I violations are not to exceed the maximum amounts authorized by Section 309(g)(2)(A) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently \$11,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$32,500). Pursuant to 40 CFR 19 and the Act, penalties for Class II violations are not to exceed the maximum amounts authorized by Section 309(g)(2)(B) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently \$11,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$157,500).
3. **Criminal Penalties:**
 - a. **Negligent Violations.** The Act provides that any person who negligently violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation, or by imprisonment of not more than 2 years, or both.
 - b. **Knowing Violations.** Any person who knowingly violates such sections, or such conditions or limitations is subject to criminal

penalties of \$5,000 to \$50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both.

- c. **Knowing Endangerment.** Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the Act, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.
- d. **False Statements.** The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both. The Act further provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

- C. **Need to Halt or Reduce Activity not a Defense.** It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with this permit.

- D. Duty to Mitigate.** The permittee must take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.
- E. Proper Operation and Maintenance.** The permittee must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of the permit.
- F. Bypass of Treatment Facilities**
1. Bypass not exceeding limitations. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 2 and 3 of this Part.
 2. Notice.
 - a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it must submit prior notice, if possible at least 10 days before the date of the bypass.
 - b. Unanticipated bypass. The permittee must submit notice of an unanticipated bypass as required under Part III.G ("Twenty-four Hour Notice of Noncompliance Reporting").
 3. Prohibition of bypass.
 - a. Bypass is prohibited, and the Director may take enforcement action against the permittee for a bypass, unless:
 - i) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - ii) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in

the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

- iii) The permittee submitted notices as required under paragraph 2 of this Part.
- b. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph 3.a. of this Part.

G. Upset Conditions

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the permittee meets the requirements of paragraph 2 of this Part. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
2. Conditions necessary for a demonstration of upset. To establish the affirmative defense of upset, the permittee must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - a. An upset occurred and that the permittee can identify the cause(s) of the upset;
 - b. The permitted facility was at the time being properly operated;
 - c. The permittee submitted notice of the upset as required under Part III.G, "Twenty-four Hour Notice of Noncompliance Reporting;" and
 - d. The permittee complied with any remedial measures required under Part IV.D, "Duty to Mitigate."
3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

- H. Toxic Pollutants.** The permittee must comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or

prohibitions, even if the permit has not yet been modified to incorporate the requirement.

- I. Planned Changes.** The permittee must give notice to the Director and ADEC as soon as possible of any planned physical alterations or additions to the permitted facility whenever:
1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29(b); or
 2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements under Part III.I (“Changes in Discharge of Toxic Substances”).
- J. Anticipated Noncompliance.** The permittee must give advance notice to the Director and ADEC of any planned changes in the permitted facility or activity that may result in noncompliance with this permit.

V. GENERAL PROVISIONS

- A. Permit Actions.** This permit may be modified, revoked and reissued, or terminated for cause as specified in 40 CFR 122.62, 122.64, or 124.5. The filing of a request by the permittee for a permit modification, revocation and reissuance, termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
- B. Duty to Reapply.** If the permittee intends to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. In accordance with 40 CFR 122.21(d), and unless permission for the application to be submitted at a later date has been granted by the Regional Administrator, the permittee must submit a new application at least **180 days before the expiration date of this permit.**
- C. Duty to Provide Information.** The permittee must furnish to the Director and ADEC, within the time specified in the request, any information that the Director or ADEC may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee must also furnish to the Director or ADEC, upon request, copies of records required to be kept by this permit.

D. Other Information. When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or that it submitted incorrect information in a permit application or any report to the Director or ADEC, it must promptly submit the omitted facts or corrected information.

E. Signatory Requirements. All applications, reports or information submitted to the Director and ADEC must be signed and certified as follows.

1. All permit applications must be signed as follows:
 - a. For a corporation: by a responsible corporate officer.
 - b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.
 - c. For a municipality, state, federal, Indian tribe, or other public agency: by either a principal executive officer or ranking elected official.
2. All reports required by the permit and other information requested by the Director or ADEC must be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - a. The authorization is made in writing by a person described above;
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company; and
 - c. The written authorization is submitted to the Director and ADEC.
3. Changes to authorization. If an authorization under Part V.E.2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part V.E.2. must be submitted to the Director and ADEC prior to or together with any reports, information, or applications to be signed by an authorized representative.
4. Certification. Any person signing a document under this Part must make the following certification:

Draft Permit

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

- F. Availability of Reports.** In accordance with 40 CFR 2, information submitted to EPA pursuant to this permit may be claimed as confidential by the permittee. In accordance with the Act, permit applications, permits and effluent data are not considered confidential. Any confidentiality claim must be asserted at the time of submission by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice to the permittee. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR 2, Subpart B (Public Information) and 41 Fed. Reg. 36902 through 36924 (September 1, 1976), as amended.
- G. Inspection and Entry.** The permittee must allow the Director, ADEC, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of credentials and other documents as may be required by law, to:
1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
 2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
 3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
 4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

- H. Property Rights.** The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to persons or property or invasion of other private rights, nor any infringement of federal, tribal, state or local laws or regulations.
- I. Transfers.** This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Act. (See 40 CFR 122.61; in some cases, modification or revocation and reissuance is mandatory).
- J. State Laws.** Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Act.

VI. DEFINITIONS

1. “Act” means the Clean Water Act.
2. “ADEC” means Alaska Department of Environmental Conservation.
3. “Administrator” means the Administrator of the EPA, or an authorized representative.
4. “Average monthly discharge limitation” means the highest allowable average of “daily discharges” over a calendar month, calculated as the sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.
5. “Best Management Practices” (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas.
6. “Bypass” means the intentional diversion of waste streams from any portion of a treatment facility.
7. “Daily discharge” means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the “daily discharge” is calculated as the total mass of the pollutant discharged

over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

8. "Director" means the Director of the Office of Water, EPA, or an authorized representative.
9. "DMR" means discharge monitoring report.
10. "EPA" means the United States Environmental Protection Agency.
11. "Grab" sample is an individual sample collected over a period of time not exceeding 15 minutes.
12. "Maximum daily discharge limitation" means the highest allowable "daily discharge."
13. "Method Detection Limit (MDL)" means the minimum concentration of a substance (analyte) that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.
14. "Minimum Level (ML)" means the concentration at which the entire analytical system must give a recognizable signal and an acceptable calibration point. The ML is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all the method-specified sample weights, volumes and processing steps have been followed.
15. "QA/QC" means quality assurance/quality control.
16. "Regional Administrator" means the Regional Administrator of Region 10 of the EPA, or the authorized representative of the Regional Administrator.
17. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
18. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly

designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.